UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

In the Matter of THE UNITED STATES DEPARTMENT OF ENERGY BROOKHAVEN AREA OFFICE and ASSOCIATED UNIVERSITIES, INC. UPTON, NY 11973 EPA ID No. NYD890008975 Respondents. Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.	**CONSENT AGREEMENT AND CONSENT ORDER** Docket Nos.: II RCRA 91-0205 II RCRA 91-0204

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Executive Order ("E.O.") No. 12088 and Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), hereinafter collectively referred to as "the Act" and found at 42 U.S.C. 6901 et seq.

Section 3006(b) of the Act, 42 U.S.C. § 6926(b), provides that the Administrator of the United States Environmental Protection Agency ("EPA") may, if certain criteria are met, authorize a state to operate a hazardous waste program in lieu of the federal base program. The Administrator authorized the State of New York to operate the pre-HSWA base program in lieu of the

federal program on May 29, 1986. The State of New York received final authorization for most HSWA requirements on May 22, 1992.

E.O. No. 12088, Section 1 - 3 authorizes EPA to oversee federal compliance with RCRA, in particular, to monitor compliance with applicable pollution control standards by federal facilities and activities. Section 3008 of RCRA, 42 U.S.C. § 6928(a), authorizes EPA to enforce provisions of the Act or authorized state programs.

On or about June 28, 1991, the Complainant in this proceeding, the Director of the Air and Waste Management Division of EPA, Region II, issued a Notice of Violation/Compliance Demand ("NOV/CD") (Docket No. II-RCRA-91-0205) to Respondent, the United States Department of Energy ("DOE") Brookhaven Area Office regarding alleged violations at the Brookhaven National Laboratory ("BNL") and a Complaint, Compliance Demand and Notice of Opportunity for Hearing to Respondent, Associated Universities, Inc. ("Associated" or "AUI") (Docket No. II-RCRA-91-0204) regarding the same. The NOV/CD and Complaint alleged that Respondents violated requirements of Subtitle C of RCRA, the New York State Environmental Conservation Law, and regulations promulgated thereunder concerning the management of hazardous waste.

On or about January 4, 1993, EPA informed Respondents of additional alleged violations of hazardous waste management regulations based on May 23, 1991 and June 24, 1992 inspections of the facility conducted by duly-designated representatives of

the New York State Department of Environmental Conservation ("NYSDEC").

Complainant and Respondents have had discussions among themselves and agree that it is in the interest of justice to settle and resolve these matters without adjudication.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents are the U.S. Department of Energy, Brookhaven Area Office ("DOE") and Associated Universities, Inc. ("Associated"). DOE owns a facility known as the Brookhaven National Laboratory ("BNL facility") located in Upton, New York 11973. Associated operates the BNL facility on behalf of the Department of Energy, Brookhaven Area Office pursuant to cost type prime management and operating contract No. DE-AC02-CH00016.

2. During inspections relevant to this proceeding, Associated was a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and in 6 NYCRR 370.2(b)(122). Pursuant to Section 6001 of the Act, 42 U.S.C. § 6961, DOE was subject to all federal, state, interstate, and local requirements, both substantive and procedural, respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person subject to such requirements.

3. Respondents manage hazardous waste as generators and as an interim status treatment, storage, or disposal facility as

those terms are defined in 40 C.F.R. § 260.10 and in 6 NYCRR 370.2(b).

4. Pursuant to Section 3010 of RCRA, by notification dated November 18, 1980, the Department of Energy, Brookhaven Area Office, informed EPA that it conducts activities at its facility involving "hazardous waste" as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and in 40 C.F.R. § 261.3 and 6 NYCRR 371.1(d).

5. Title 40 C.F.R. Parts 262, 265, 268, and 270 set forth federal standards for hazardous waste generators and interim status treatment, storage or disposal facilities. Title 6 NYCRR Parts 370, 372, and 373 establish New York State requirements for hazardous waste generators and interim status treatment, storage or disposal facilities.

6. The Department of Energy, Brookhaven Area Office ("DOE") submitted a Part A permit application to EPA on November 21, 1980. DOE informed EPA in its Part A application that the "operator" of the facility, as that word is defined in 40 C.F.R. § 260.10 and 6 NYCRR 370.2(b)(112), was Associated Universities, Inc. DOE submitted a Part B permit application to EPA on April 4, 1985.

7. On or about March 4, 1991, through March 8, 1991, an inspection ("the inspection") of the facility was conducted pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, by duly-designated representatives of EPA to determine compliance with specific state and federal regulations for the generation and

management of hazardous waste resulting in the allegations set forth below.

8. Pursuant to 40 C.F.R. § 265.174 and 6 NYCRR 373-2.9(e), the owner or operator of a treatment, storage or disposal facility must conduct weekly inspections of hazardous waste container storage areas, looking for leaks and for deterioration of containers caused by corrosion or other factors.

9. Complainant's NOV/CD and Complaint alleged that Respondents stored approximately 24 (55 gallon) drums of scintillation vials (D001 - storage date 12/31/89) in Building 448, that insufficient aisle space was provided between drums, which were stored four drums deep by four drums wide by two drums high and that access to, and inspection of, inner drums was not possible.

10. Respondents' failure to conduct weekly inspections of hazardous waste container storage areas, if proven, would constitute a violation of 40 C.F.R. § 265.174 and 6 NYCRR 373-2.9(e).

11. Pursuant to 40 C.F.R. § 265.32(d) and 6 NYCRR 373-3.3(c)(4), the owner or operator of a treatment, storage or disposal facility must equip its facility with water at adequate pressure and volume to supply water hose streams, foam producing equipment, automatic sprinklers, or water spray systems, unless none of the hazards posed by waste handled at the facility could require that particular type of equipment.

12. Complainant's NOV/CD and Complaint alleged that Respondents maintained no fire abatement equipment other than portable fire extinguishers in Buildings 444, 448 and 483. As drums of ignitable hazardous waste are stored in these buildings, an adequate water supply or foam producing equipment is required in the event of a fire.

13. Respondents' failure to equip Buildings 444, 448 and 483 of their facility with water at adequate pressure and volume to supply water hose streams, foam producing equipment, automatic sprinklers, or water spray systems, if proven, would constitute a violation of 40 C.F.R. § 265.32(d) and 6 NYCRR 373.3.3(c)(4).

14. Pursuant to 40 C.F.R. § 262.34(a)(2) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(2), a generator who treats, stores, or disposes of hazardous waste on-site must mark containers of hazardous waste with the date upon which each period of accumulation begins.

15. Complainant's NOV/CD and Complaint alleged that containers of hazardous waste stored in several areas of the facility were not marked to indicate the accumulation start dates. Specifically, four (55 Gallon) drums of scintillation vials (D001) stored in Building 448, one (55 Gallon) drum of carbon tetrachloride (U211) stored in Building 483, one (100 gram) bottle of fluorobenzene (D001) stored in Building 725, and one (1 Gallon) bottle of hydrochloric acid (D002) and three (0.25 pint) bottles of formic acid (U123) stored in Building 801 were not marked to indicate the accumulation start dates.

16. Respondents' failure to mark containers of hazardous waste with accumulation start dates, if proven, would constitute a violation of 40 C.F.R. § 262.34(a)(2) and 6 NYCRR 373-1.1.(d)(1)(iii)(c)(2).

17. Pursuant to 40 C.F.R. § 262.34(a)(3) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(3), the owner or operator of a treatment, storage or disposal facility, while accumulating containers of hazardous waste on-site, must label each such container with the words "Hazardous Waste."

18. Complainant's NOV/CD and Complaint alleged that Respondents had failed to label with the words "Hazardous Waste" several containers of hazardous waste that were being accumulated on-site. Specifically, one (55 Gallon) drum of freon (F001) stored in Building 928, one (100) gram bottle of fluorobenzene (D001) stored in Building 725, one (3 kilogram) bottle of 1,4-Dioxane (U108) stored in Building 815, and one (1 Gallon) bottle of hydrochloric acid (D002) and three (0.25 pint) bottles of formic acid (U123) stored in Building 801 were not labeled with the words "Hazardous Waste."

19. Respondents' failure to mark containers of hazardous waste with the words "Hazardous Waste" while accumulating containers of hazardous waste at the facility, if proven, would constitute a violation of 40 C.F.R. § 262.34(a)(3) and 6 NYCRR 373-1.1(d)(1)(iii)(c)(3).

20. Pursuant to 40 C.F.R. § 270.71(a)(2) and 6 NYCRR 373-1.3(f)(1)(ii), an interim status treatment, storage, or disposal

facility shall not employ processes not specified in Part A of its permit application.

21. Complainant's NOV/CD and Complaint alleged that Respondents had stored hazardous waste for periods greater than 90 days in an area of the facility that was not included in Respondent's Part A application. Specifically, one (8 ounce) bottle of hydrochloric acid/nitric acid (D002 - accumulation start date 11/3/90) and one (1 pint) bottle of carbon tetrachloride (U211 - accumulation start date 7/1/90) had been stored in Building 725, which was not designated as a storage area in Respondent DOE's Part A permit application, for 121 days and 246 days, respectively, at the time of the inspection.

22. Respondents' storage of hazardous waste for periods greater than 90 days in an area not designated in the Part A permit application, if proven, would constitute a violation of 40 C.F.R. § 270.71(a)(2) and 6 NYCRR 373-1(f)(1)(ii).

23. Pursuant to 40 C.F.R. § 265.173 and 6 NYCRR 373-3.9(d)(1), the owner or operator of a treatment, storage or disposal facility must keep containers of hazardous waste closed during storage, except when it is necessary to add or remove waste.

24. Complainant's NOV/CD and Complaint alleged that Respondents had failed to keep a container of hazardous waste closed during storage. Specifically one (55 Gallon) drum of paint thinner/lacquer (D001) in the Paint Shop storage trailer was left open, fitted with a funnel.

25. Respondents' failure to keep a container of hazardous waste closed during storage, if proven, would constitute a violation of 40 C.F.R. § 265.173 and 6 NYCRR 373-3.9(d)(1).

26. Pursuant to RCRA Section 3005(b)(2), the owner or operator of a treatment, storage or disposal facility must identify in its permit application each site at which hazardous waste or the products of treatment of hazardous waste will be disposed, treated, transported to, or stored.

27. Pursuant to 40 C.F.R. § 270.71(a)(2), an interim status facility shall not employ processes not specified in its Part A permit application. 40 C.F.R. § 270.71(b) further states that during interim status, owners or operators shall comply with the interim status standards of 40 C.F.R. Part 265.

28. Complainant's NOV/CD and Complaint alleged that Respondents had released untreated groundwater through the operation of an Aquifer Remediation Project, in which recovery wells discharged directly to an unlined recharge basin situated in the facility. The discharged groundwater had been contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes stored at the facility. The release of untreated groundwater occurred during the winter mode of operation of the Aquifer Remediation Project, which was conducted 122 days per year during 1987 through 1990.

29. Complainant's NOV/CD and Complaint alleged that Respondents had released aerated groundwater through the

operation of an Aquifer Remediation Project, in which recovery wells fitted with spray aeration nozzles discharged directly to an unlined recharge basin situated in the facility. The discharged groundwater had been contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes stored at the facility. The release of aerated groundwater occurred during the summer mode of operation of the Aquifer Remediation Project, which was conducted 243 days per year during 1987 through 1989.

30. Respondents' discharge of groundwater containing hazardous waste to an unlined recharge basin not specified in the Part A permit application, if proven, would constitute a violation of RCRA Section 3005(b)(2) and 40 C.F.R. § 270.71.

31. 40 C.F.R. § 268.30 sets forth waste specific land disposal prohibitions for solvent wastes F001 through F005 identified in 40 C.F.R. § 261.31.

32. Complainant's NOV/CD and Complaint alleged that Respondents had discharged, through operation of an Aquifer Remediation Project, restricted hazardous waste (untreated groundwater contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes (F001/F002) stored at the facility) to an unlined recharge basin.

33. Complainant's NOV/CD and Complaint alleged that Respondents had discharged, through operation of an Aquifer Remediation Project, restricted hazardous waste (aerated

groundwater contaminated with chlorinated organic solvents as a result of past spillage and leakage of containers of listed hazardous wastes (F001/F002) stored at the facility) to an unlined recharge basin.

34. Respondents' land disposal of groundwater containing F001/F002 restricted hazardous wastes in an unlined recharge basin, if proven, would constitute a violation of 40 C.F.R. § 268.30.

35. Based on information submitted to EPA by Respondents in Answers to the NOV/CD and Complaint on August 23, 1991, notification of implementation of compliance requirements submitted on July 24, 1991, and information provided at settlement discussions, penalties to AUI have been appropriately adjusted.

36. Additional alleged violations were found during inspections of the facility, conducted on or about May 23, 1991 and June 24, 1992, by duly-designated representatives of the New York State Department of Environmental Conservation ("NYSDEC"), to determine compliance with specific regulations for the generation and management of hazardous waste.

37. Pursuant to 40 C.F.R. § 265.112(b)(1) and 6 NYCRR 373-3.7(i)(i)(iii), the owner or operator of a hazardous waste management facility must have a written closure plan. The closure plan must identify steps necessary to perform partial and/or final closure of the facility in accordance with the

requirements set forth in 40 C.F.R. § 265.112(b) and 6 NYCRR 373-3.7(c)(2).

38. Pursuant to 40 C.F.R. § 265.112(b)(1) and 6 NYCRR 373-3.7(c)(2)(iii), the closure plan must include a description of how each hazardous waste management unit at the facility will be closed.

39. NYSDEC's inspectors concluded that Respondents did not include a description of how each hazardous waste management unit at the facility will be closed. Specifically, Respondents allegedly did not describe in their closure plan the methods for closure of Buildings 360 and 446, in which mixed wastes are stored, and two "Conex" hazardous waste storage units.

40. Pursuant to 40 C.F.R. § 265.112(b)(3) and 6 NYCRR 373-3.7(c)(2)(iii), the closure plan must include a detailed description of the methods to be used during partial and final closure, including, but not limited to, methods for removing, transporting, storing, or disposing of all hazardous wastes.

41. NYSDEC's inspectors concluded that Respondents did not address in their closure plan any procedures for removing, transporting, storing, or disposing of mixed waste at their facility.

42. Respondents' alleged failure to include in their closure plan a description of how Buildings 360 and 446, and two "Conex" hazardous waste storage structures at their interim status storage units will be closed if proven, would constitute a

violation of 40 C.F.R. § 265.112(b)(1) and 6 NYCRR 373.3 7(c)(2)(i).

43. Respondents' alleged failure to provide a detailed description of the methods for removing, transporting, storing, or disposing of mixed waste at their facility, if proven, would constitute a violation of 40 C.F.R. § 265.112(b)(3) and 6 NYCRR 373-3.7(c)(2)(iii).

44. Pursuant to 40 C.F.R. § 262.20(a), a generator who transports, or offers for transport, hazardous waste for off-site treatment, storage, or disposal must prepare a Uniform Hazardous Waste Manifest. Pursuant to 6 NYCRR 372.2(b)(5)(i), no generator may offer shipment of hazardous waste for transport off-site without an accompanying manifest.

45. NYSDEC's inspectors concluded that Respondents had offered for shipment off-site without accompanying manifests spent solvent waste (F003/F005) generated from parts washing operations.

46. Respondents' alleged failure to prepare manifests for off-site shipment of hazardous waste, if proven, would constitute a violation of 40 C.F.R. § 262.20(a) and 6 NYCRR 372.2(b)(5)(i).

47. Pursuant to 40 C.F.R. § 265.51(a) and 6 NYCRR 373-3.4(b)(1), an owner or operator must have a contingency plan for his facility. Pursuant to 40 C.F.R. § 265.52(e) and 6 NYCRR 373-3.4(c)(5), the contingency plan must include a list of all emergency equipment at the facility, where such equipment is required. In addition, the plan must also include the location

and a physical description of each item on the list, and a brief outline of its capabilities.

48. NYSDEC's inspectors concluded that Respondents had not specified in their contingency plan the location or type of the emergency equipment maintained at any of the approximately 26 hazardous waste accumulation areas at the facility.

49. Respondents alleged failure to specify in the contingency plan the emergency equipment maintained at their hazardous waste accumulation areas if proven, would constitute a violation of 40 C.F.R. § 265.52(e) and 6 NYCRR 373-3.4(c)(5).

50. Respondents neither admit nor deny the specific allegations contained in the CD/NOV and Complaint and the Findings of Fact and Conclusions of Law in paragraphs "8" through "49," above.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent AUI shall within ten (10) days of the effective date of this Consent Agreement and Consent Order (CA/CO) maintain sufficient aisle space in all hazardous waste container storage areas to allow the conduct of inspections of those areas. Respondent AUI shall conduct weekly inspections in

all hazardous waste container storage areas, so as to comply with Federal and State Regulations.

2. Respondent AUI shall within forty five (45) days of the effective date of this CA/CO submit to EPA certifications of compliance with all applicable fire protection standards for each building or structure at the facility in which ignitable wastes are stored.

3. Respondent AUI shall within two (2) days of the effective date of this CA/CO mark all containers of hazardous waste in storage at the facility (with the exception of those containers in satellite accumulation areas) with the date upon which each period of accumulation begins.

4. Respondent AUI shall within two (2) days of the effective date of this CA/CO mark all containers of hazardous waste in storage at the facility with the words "Hazardous Waste", or, in the case of satellite accumulation areas, with other words which identify the contents of the containers.

5. Respondent AUI shall within ten (10) days of the effective date of this CA/CO cease to store hazardous wastes on site, to the extent that the waste is not mixed waste, for periods exceeding the limits set forth in 40 C.F.R. Parts 262 and 268, and equivalent New York State regulations, so as to comply with Federal and State regulations. Hazardous and mixed waste shall be stored in accordance with all applicable federal and state requirements or as otherwise approved by EPA or the NYSDEC,

as appropriate. Suspected mixed waste may be exempt from the above requirements upon Complainant's written approval.

6. Respondent AUI shall immediately upon the effective date of this CA/CO maintain all containers of hazardous waste at the facility in a closed condition, except when it is necessary to add or remove waste.

7. Respondent AUI shall not operate a surface impoundment or spray aeration device for the treatment, storage, or disposal of hazardous waste unless it is in compliance with all of the terms in its RCRA permit and/or the final Interagency Agreement ("IAG") between DOE, EPA and NYSDEC, Administrative Docket No.: II CERCLA-FFA-00201.

8. Respondent AUI shall perform the Wildlife Survey and Management Plan of Wetland and Forested Areas (Eastern Boundary of the Site) which was approved by EPA as a supplemental environmental project and incorporated into this CA/CO as Attachment A.

a. The Wildlife Survey shall be initiated within thirty (30) days from the effective date of this CA/CO, and shall be completed within 18 months following its initiation.

b. Respondent AUI shall within sixty (60) days of completing the Wildlife Survey submit to EPA a report detailing its findings. Such report shall include a determination by Respondent AUI as to the necessity of implementing a Wildlife Management Plan and shall incorporate such a plan if determined

necessary. Such report, determination, and plan shall be subject to review and comment by EPA. EPA reserves the right to require Respondent AUI to submit and conduct a Wildlife Management Plan in the event that Respondent AUI determines such submission and conduct unnecessary. EPA shall provide written approval of such report, determination, and/or plan to Respondents or shall provide comments to Respondent AUI in the event that it determines that revisions to the report and plan are necessary, or that the conduct of a Wildlife Management Plan is required. Respondent AUI shall within sixty (60) days of receiving such comments submit to EPA a revised Wildlife Survey Report and, if required by EPA, a Wildlife Management Plan. EPA shall provide written approval of such revised report and plan to Respondent AUI.

c. In the event that a Wildlife Management Plan is required, Respondent AUI shall within thirty (30) days of receiving written approval from EPA initiate such plan. Respondent AUI shall complete such plan within one hundred eighty (180) days following its initiation.

d. The Wildlife Survey and Management Plan Reports shall be kept on file at the facility and made available for review by the public for five years from the date of their completion.

9. No later than ten (10) days after the initiation of the Wildlife Survey, the initiation of any required Wildlife Management Plan and the completion of any Wildlife Management Plan pursuant to paragraph "8" (a) and (c) above, Respondent AUI

shall submit to EPA a written notice of compliance (and any appropriate supporting documentation) or noncompliance for each of the requirements set forth therein. If the Respondent AUI is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule for achieving expeditious compliance with the requirement. Notice of noncompliance will in no way excuse the noncompliance or relieve Respondent of the penalty provisions of paragraph "20", below. This information request is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

10. Respondent AUI shall by no later than sixty (60) days after the effective date of this CA/CO, initiate an internal audit of its hazardous waste management system and procedures at the hazardous waste management areas and satellite accumulation areas. Such audit shall be conducted in accordance with the requirements set forth in Attachment B of this CA/CO. Such audit shall be completed within sixty (60) days of its initiation. Respondent AUI shall assess in this audit the facility's compliance with the statutory and regulatory requirements of RCRA, and with the provisions and requirements of this Order. Respondent AUI shall seek to identify the root causes of the violations addressed in this Order, and shall develop and implement management practices which significantly reduce the probability that such violations will reoccur. Respondent AUI shall within sixty (60) days of completion of the Audit prepare and submit to EPA a report detailing its findings. The Audit

Report shall address, at a minimum, the root causes identified for the violations addressed in this Order, and the management practices developed and implemented by Respondents to reduce the probability that such violations will reoccur.

11. Respondents AUI shall within thirty (30) days of the effective date of this Consent Agreement and Consent Order (CA/CO) amend its closure plan to include a detailed description of the methods for removing, transporting, storing, or disposing of all mixed waste maintained at the Facility, and a description of how Buildings 360 and 446 and its "Conex" hazardous waste storage units will be closed.

12. Respondent AUI shall immediately upon the effective date of this Consent Agreement and Consent Order (CA/CO) cease the shipment off site of hazardous waste not accompanied by a Uniform Hazardous Waste Manifest.

13. Respondent AUI shall in accordance with 40 C.F.R. § 265.52(e) within thirty (30) days of the effective date of this Consent Agreement and Consent Order (CA/CO) amend its contingency plan to include a list of all emergency equipment at the Facility, where such equipment is required, and to include the location and physical description of each item on the list, and a brief outline of its capabilities.

14. Respondent DOE shall ensure and guarantee that Respondent AUI undertakes the activities described in paragraphs "1" thru "13" above. While DOE and AUI have agreed among themselves that AUI shall take the lead in performing the above-

described activities, DOE as the owner of the facility remains liable in event of inadequate or untimely performance of these activities. This paragraph does not relieve AUI from any responsibility or liability for complying with the terms of this Order.

15. Respondents have submitted to EPA, by letter dated July 24, 1991, from DOE to EPA written notice of AUI implementation of compliance requirements, accompanied by a copy of appropriate supporting documentation, for each of the requirements set forth in paragraphs "1" through "6" above.

16. This CA/CO shall be fully enforceable in a court having jurisdiction over the subject matter and the two Respondents.

17. DOE recognizes its obligations to comply with RCRA. The provisions of this CA/CO shall be enforceable under citizen suits pursuant to 42 U.S.C. § 6972(a)(1)(A), including actions or suits by the State and its agencies. In the event of any action filed under Section 7002(a) of RCRA alleging any violation of any such requirement of this CA/CO, it will be presumed that the provisions of the CA/CO are requirements that have become effective pursuant to RCRA and that the State and its agencies are a "person" within the meaning of Section 7002(a), and that this agreement is enforceable under section 7002.

18. Respondents shall submit the above required information and notices to the following addressees:

Mr. George C. Meyer, P.E., Chief
Hazardous Waste Compliance Branch
Region II-U.S. EPA
26 Federal Plaza, Room 1000

Mr. Leonard Grossman, HWC
Region II-U.S. EPA
26 Federal Plaza, Rm 1000
New York, NY 10278

New York, New York 10278

Mr. Larry Nadler, Unit Supervisor
Hazardous Waste Regulatory Unit
NYSDEC, 50 Wolf Road
Albany, NY 12233

19. a. This Consent Agreement and Consent Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to be an approval of any required environmental impact statement.

b. The tasks to be completed by Respondents in paragraphs "1" through "14", above, have been agreed to by Complainant solely for purposes of settlement of these civil administrative proceedings. As long as Respondents are in compliance with this Agreement, EPA will not initiate additional civil enforcement actions for the violations specifically alleged in the NOV/CD and Complaint issued in this proceeding or discovered during the May 23, 1991, and June 24, 1992, NYSDEC inspections referenced herein. This Consent Agreement and Consent Order in no way limits Complainant's right to initiate any action against Respondents regarding any statutory or regulatory violation(s) not alleged in the Complaint or Notice of Violation/Compliance Demand issued in June 1991 or discovered during the May 23, 1991, and June 24, 1992, NYSDEC inspections.

c. Respondents and the signatories for the Respondents both certify, as of the date of Respondents' signing of this Consent Agreement, that, except for those obligations that exist under the Interagency Agreement with respect to Tasks 1 and 2 of Attachment A as they relate to "operable units," Respondents are not otherwise required, by virtue of any local, state or federal statute, regulation, order, agreement, consent decree or other law, to perform the tasks specified in Paragraph "8" of this Consent Agreement. Respondents' signatories further certify that Respondents have not already received, and are not currently negotiating to receive, credit in any other enforcement action or Agreement for any of these same tasks.

d. If in the future EPA believes that any of the information certified to, pursuant to Paragraph "c," above, was inaccurate, EPA will so advise the Respondents of its belief and its basis, and will afford Respondents an opportunity to submit comments to EPA. If EPA then determines that the certification was inaccurate, EPA may initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.

20. Respondent AUI shall pay by cashier's or certified check, the amount of sixty three thousand and two hundred and fifty dollars ($63,250), payable to the Treasurer, United States of America, and mailed to the EPA - Region II (Regional Hearing Clerk), P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. This penalty amount is in full settlement of all civil liabilities

which might have attached as a result of the following civil Complaints brought as part of a multi-media action against the Respondent Associated: Docket/Index Nos. II RCRA 91-0204 and II TSCA-PCB-91-0248 and of additional EPA allegations resulting from the NYSDEC May 23, 1991, and June 24, 1992, inspections of the BNL facility. The payment shall be identified as Associated Universities Inc. and should reference all of the above Docket/Index Numbers. Payment is due within thirty (30) days after the Regional Administrator signs this Consent Agreement and Consent Order (hereinafter the "effective date").

a. Failure to pay the above amount in full according to the above provisions will result in referral of this matter to the United States Attorney for collection.

b. Furthermore, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the effective date of this Consent Agreement and Consent Order through the date of payment. In addition, a late payment handling charge of fifteen dollars ($15.00) per month will be assessed if payment is not received by the due date. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.

c. In the event that Respondent AUI fails to complete the supplemental environmental projects specified in paragraphs "8" and "10" above, within one year of the timeframes specified in

paragraphs "8" and "10", above, or any approved extension to the schedule, Complainant shall notify Respondent in writing, certified mail, return receipt requested, of its finding that Respondent has not performed, and shall specify which of the agreed-to tasks were not performed. Respondent AUI shall have twenty (20) days in which to submit to Complainant an explanation as AUI deems appropriate. If Complainant then determines that AUI has failed to perform, Complainant shall notify Respondent, in writing, of its determination of such failure. Respondent AUI shall within thirty (30) days of such notification pay by cashier's or certified check, the amount of eighty five thousand dollars ($85,000.00), payable to the Treasurer, United States of America, and mailed to the EPA - Region II (Regional Hearing Clerk), P.O. Box 360188M, Pittsburgh, Pennsylvania 15251.

d. Extensions of scheduled activities may be requested of and granted by EPA if any event arises from causes beyond the control and without the fault of Respondents that causes an unavoidable delay in or prevents the performance of any obligation under this CA/CO, provided that AUI shall have exercised due diligence to prevent, eliminate or minimize such delays, including but not limited to: acts of God; fire; war; insurrection; civil disturbance; explosion; adverse weather conditions that could not be reasonably anticipated; restraint by Court Order or order of public authority; inability to obtain after exercise of reasonable diligence any necessary authorization, approval, permit or licenses due to action or

inaction of any governmental agency or authority other than DOE; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds if AUI shall have made timely request for such funds from DOE and if DOE shall have made timely request for such funds from Congress. A Force Majeure shall also include any strike or other labor dispute whether or not within the control of the Parties affected thereby. Requests for extensions of scheduled activities must be made in writing to the EPA Project Coordinator, Mr. Leonard Grossman, at the address specified in paragraph "18" above. The Project Coordinator will provide written notice of EPA approval or disapproval of any such request.

21. Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement the procedures of this section shall apply. In addition, during the pendency of any dispute, the DOE agrees that it shall continue to implement those portions of this Agreement which are not in dispute and which EPA determines can be reasonably implemented pending final resolution of the issues(s) in dispute. If EPA determines that all or part of those portions of work which are affected by the dispute should stop during the pendency of the dispute, the DOE shall discontinue implementing those portions of the work.

All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this section shall be available to all parties except AUI and shall be implemented to resolve a dispute.

a. Within thirty (30) days of the date of any action by EPA which leads to or generates a dispute, the DOE shall submit to EPA a written statement of dispute setting forth the nature of the dispute, the DOE's position with respect to the dispute and the information the DOE is relying upon to support its position. If the DOE does not provide such written statement to EPA within this thirty (30) day period, the DOE shall be deemed to have agreed with the action taken by EPA which led to or generated the dispute.

b. Where EPA issues a Written Notice of Position with which DOE disagrees, DOE may provide EPA with a written statement of dispute setting forth the nature of the dispute, its position with respect to the dispute and the information it is relying upon to support its position. If DOE does not provide such a written statement of dispute within thirty (30) days of receipt of the Written Notice of Position, the Parties shall be deemed to have agreed with the Written Notice of Position.

c. Upon receipt of the written statement of dispute, the Parties shall engage in dispute resolution among the Project Managers and/or their immediate supervisors. The Parties shall

have fourteen (14) days from the receipt by the EPA of the written statement of dispute to resolve the dispute. During this period the Project Managers shall meet as many times as are necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period any Party may, within ten (10) days of the conclusion of the fourteen (14) day dispute resolution period, submit a written notice to the Parties escalating the dispute to the Dispute Resolution Committee (DRC) for resolution. If no Party elevates the dispute to the DRC within this ten (10) day escalation period, the Parties shall be deemed to have agreed with EPA's position with respect to the dispute.

d. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to Subparts a, b or c of this section. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. Following escalation of a dispute to the DRC as set forth in Subpart c of this section, the DRC shall have thirty (30) days to unanimously resolve the dispute. If the DRC is unable to unanimously resolve the dispute within this thirty (30) day period, any Party may, within ten (10) days of the conclusion of the thirty (30) day dispute resolution period, submit a written notice of dispute to the

Administrator of U.S. EPA for final resolution of the dispute. In the event that the dispute is not escalated to the Administrator of U.S. EPA within the designated ten (10) day escalation period, the Parties shall be deemed to have agreed with the U.S. EPA DRC representative's position with respect to the dispute.

e. Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Subpart d of this section, the Administrator will review and resolve such dispute as expeditiously as possible. Upon resolution, the Administrator shall provide the DOE with a written final decision setting forth resolution of the dispute.

f. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region II. The DOE's designated member is the DOE's equivalent position. Notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all the Parties pursuant to the paragraph 18 of this Agreement.

g. The pendency of any dispute under this section shall not affect the DOE's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue

and be completed in accordance with the applicable schedule. The determination of elements of work, submittals or actions affected by the dispute shall be determined by EPA and shall not be subject to dispute under this section.

h. Within fourteen (14) days of resolution of a dispute pursuant to the procedures specified in this section, the DOE shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

i. Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The DOE shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this section of this Agreement.

22. Respondents have read the foregoing Agreement and consent to its issuance and its terms. Respondents admit the jurisdictional allegations, neither admit nor deny specific factual allegations contained in the Complaint and Notice of Violation/Compliance Demand. Respondent AUI consents to the assessment of the stated civil penalty. Respondents explicitly waive any right they may have to request a hearing on this matter, and Respondent AUI agrees to pay any penalty due under the terms of the Consent Agreement.

23. EPA recognizes that the BNL facility is currently operated by AUI under a cost type contract with DOE and under

this contract AUI's performance is expressly conditioned on receipt of appropriated funds from DOE. It is the expectation of the Parties to this agreement that all obligations of DOE arising under this CA/CO will be fully funded. Consistent with Congressional limitations on future funding, DOE shall take all necessary steps and make best efforts to obtain timely funding to meet its obligations under this CA/CO. Any requirement for the payment or obligation of funds by DOE established by the terms of the CA/CO shall be subject to the availability of appropriated funds and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring payment or obligation of such funds shall be appropriately adjusted, but such adjustment shall not by itself extend the life of this CA/CO. If appropriated funds are not available to fulfill DOE's obligations under this CA/CO, EPA reserves the right to initiate any other action it deems appropriate absent this CA/CO. Nothing herein shall affect DOE's authority over, or responsibility for, its budget or funding level submissions. However, if sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this Agreement, and DOE reports the lack of funds promptly to EPA, Region II, any resulting delay shall be presumed to have

been due to circumstances beyond the control of DOE which could not have overcome by due diligence of DOE.

24. Respondents waive any right they may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Consent Order.

25. Each person signing this Agreement, below, certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement.

26. The Effective Date of this CA/CO shall be the date the Regional Administrator has signed both this document and Consent Agreement and Consent Order Docket No.: II TSCA-PCB-91-0248.

27. This CA/CO shall terminate upon EPA's written determination that Respondents have satisfied all the provisions herein.

RESPONDENT:

BY: Carson L. Nealy
DEPARTMENT OF ENERGY
BROOKHAVEN AREA OFFICE

NAME: Carson L. Nealy
(Please Print)

TITLE: Brookhaven Area Office
Area Manager

DATE: 4/8/94

RESPONDENT:

BY: Michael M Gold
ASSOCIATED UNIVERSITIES, INC.

NAME: Michael M. Goldman

TITLE: Laboratory Counsel

DATE: 4/11/94

BY:
CONRAD SIMON
Director
Air & Waste Management Division
U.S. Environmental Protection
Agency - Region II

4/20/94

CONSENT ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region II, concurs in the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved and issued, as an Order, effective immediately.

Jeanne M. Fox
Regional Administrator
U.S. Environmental Protection Agency - Region II
26 Federal Plaza
New York, New York 10278

DATE: 4/23/84

Attachment A

WILDLIFE SURVEY OF WETLAND AND FORESTED AREAS (EASTERN BOUNDARY OF THE SITE)

INTRODUCTION :

Wildlife investigations to establish baseline population makeup would be divided into four categories: mammals, birds, reptiles and amphibians, and fish. A minimum of one year of field data collection would be required to observe seasonally present and migratory species. Data collection would be followed by data analysis, report generation, report review by BNL and DOE and report issuance. The Survey will encompass the eastern, undeveloped portion of BNL.

Of the categories to be investigated, mammals and birds would be studied in each of the four seasons, while reptiles, amphibians, and fish would be studied in all but the winter.

TASKS:

1. Literature Search and Field Reconnaissance:

A literature search would be performed to determine which species have been identified onsite and which species have historically been found onsite. A review of topography and habitat information on the sites would be conducted to identify different areas, divide the habitats into survey transects, and lay out survey schemes.

Potential sources of information include for review include the U.S. Fish and Wildlife Service, the New York State Department of Environmental Conservation, other local environmental groups, such as the Audubon Society, the New York Natural Heritage Program, other local organizations and BNL's 1977 Final Environmental Impact Statement.

Field reconnaissance will include verification of existing information and identification and delineation of major wildlife habitats types present.

2. Field Survey:

All disciplines would be investigated during spring, summer, and fall, although amphibian work would be intensified in the early spring during breeding season and fish studies would be intensified during the spring and early fall seasons to see both fall and spring spawning activity.

During the winter sampling session, only mammal and bird surveys would be conducted. All wildlife habitats will be fully characterized during the field surveys.

A wetlands assessment, including a wetlands delineation following the Federal Manual for Identifying and Delineating Jurisdictional Wetlands will be performed.

3. **Data Entry/Reporting:**

A database would be developed in which all field data collected would be entered. A report would be developed and reviewed by BNL/DOE prior to issuance. The report would include information on study strategy, materials and methods, results and discussion.

4. **Management Plan:**

Should federal or state listed threatened or endangered species be revealed during this survey, BNL will formulate and implement a management plan that will strive to protect these species through protection of existing habitats or habitat specific management. The management plan will also address primary recreational and indigenous species or other affected populations revealed by the survey, and will include a balancing of the operational requirement of BNL with the protection of the habitats of such species. Management strategies such as the promotion of plantings attractive to wildlife, installation of nest boxes in wetlands and field edge areas and riparian habitat stabilization could be utilized to promote and enhance utilization of existing habitats at BNL by these species. The introduction and protection of exotic or alien species will be avoided.

Attachment B

RCRA AUDIT

INTRODUCTION:

A RCRA audit of the Hazardous Waste Management Area and satellite accumulation areas would be conducted by an outside firm. The audit will include a review for compliance of the following requirements:

Marking and Labeling, Including Time/Dates: Each container of hazardous waste shall be clearly labeled "Hazardous Waste" and shall have the accumulation date marked on it. Per NYS regulations, the identification of the material shall also be included. All containers shall be legibly marked with the accumulation start date. For waste stored in 90-day accumulation areas, the waste must be removed from the area within 90 days (30 days for PCBs). For a TSD facility, except for non-LDR wastes, waste can only be stored for a year.

Packaging: Each container of hazardous waste shall be packaged with a material compatible to the waste type. The package shall be closed, sealed, and in good condition.

Aisle Space: Aisle space shall be adequate to allow unobstructed movement of personnel, fire protection, spill control, and to allow for inspection of containers and labeling.

Signs: All containers, storage areas, and facilities that contain hazardous waste shall be indicated as such with a sign that states "Hazardous Waste". Also, if the waste is ignitable, then a "No Smoking" sign shall also be posted.

Communications: Adequate communication or alarm systems shall be easily accessible.

Training: Personnel handling hazardous waste shall be trained in accordance with the facility's hazardous waste training program requirements.

Secondary Containment: For areas that store liquid waste in quantities above 250 gallons secondary containment shall be the largest of the two following requirements: 100% of the largest container or 30% of the total volume in storage. For areas that have less than 250 gallons, the requirements are: 100% of the largest container or 10% of the total volume in storage. For liquid PCBs, it shall be 25% of the total volume or twice the volume of the largest container.

Satellite Accumulation Areas: All containers must be clearly labeled "Hazardous Waste". Volume of hazardous waste shall not exceed 55 gallons.

Manifests, Recordkeeping, and Reporting: Proper manifests and inspection logs shall be documented in accordance with 40 CFR.

Characterization: All wastes shall be sufficiently characterized (either by direct sampling or process knowledge) in accordance with 40 CFR 261.

QA/QC: A waste analysis plan shall be implemented.

Preparedness and Prevention: Adequate equipment and procedures in place to handle a fire or explosion and spills.

Contingency Plans and Emergency Procedures: A contingency plan shall be available and implementable and distributed to the appropriate off-site authorities.

Inspections: Weekly inspections shall be performed and be documented for TSDs and 90-day accumulations areas.

TASKS:

The following tasks are to be conducted by the independent contractor:

1. Audit of Hazardous Waste Management Area and satellite accumulation areas.

2. Report to the Associate Director on the status of RCRA compliance, including deficiencies or areas of non-compliance.

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